

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 07-09

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Whether the taxpayer qualifies as a “hospital company” for Tennessee franchise and excise tax purposes.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[“TAXPAYER”] and its [NUMBER OF] subsidiary entities operate in Tennessee as “home care organizations” as defined under Tenn. Code Ann. § 68-11-201(18).¹ The Taxpayer and its

¹ A “home care organization” is defined as an entity that “provides home health services, home medical equipment services, professional support services or hospice services to patients on an outpatient basis in either their regular or temporary place of residence.” Tenn. Code Ann. § 68-11-201(18)(A).

subsidiaries are licensed as such under Tenn. Code Ann. § 68-11-202. Additionally, the Taxpayer and its related entities are affiliates of [HOSPITAL], which operates as a fully accredited hospital.

The Taxpayer filed an amended 2001 Form FAE 170 (Tennessee franchise and excise tax return) (the “Amended Return”) in conjunction with its letter ruling request. The Taxpayer prepared the Amended Return as a hospital company combined group, claiming credits under Tenn. Code Ann. §§ 67-4-2009(5) and 67-4-2009(6).² According to the Department’s records, the Taxpayer began filing Tennessee franchise and excise tax returns beginning with the taxable year 2001.

QUESTION

Does the Taxpayer qualify as a “hospital company” for Tennessee franchise and excise tax purposes?

RULING

No. The Taxpayer does not qualify as a “hospital company” for Tennessee franchise and excise tax purposes.

ANALYSIS

The Taxpayer does not come within the definition of a “hospital company” for Tennessee franchise and excise tax purposes.

Tenn. Code Ann. § 67-4-2004(17), which applies to all taxable years after 1998, defines a “hospital company” as a corporation or other entity that “qualified before January 1, 1999, with the department as a hospital company as defined under prior law.”³ The term “hospital company” was defined under prior law at Tenn. Code Ann. § 67-4-804(11)(A) (1998)⁴ as “a corporation or other entity” subject to Tennessee franchise and excise taxation, “substantially all of the activities of which during the taxable year constitute the performance of health care services and which either (1) owns and manages ten or more hospitals; or (2) performs health care services for ten or more hospitals owned and managed by a corporation or other entity which is in its same controlled group as defined by § 267(f)(1) of the Internal Revenue Code of 1986, as amended.”

² Tenn. Code Ann. § 67-4-2009(5) provides that a hospital company and its affiliates filing a franchise and excise tax return on a combined basis shall be allowed as a credit an amount equal to the lesser of the franchise tax or excise tax. The effect of this provision is that the combined annual franchise and excise tax of the combined group is limited to the greater of the franchise or the excise tax. Tenn. Code Ann. § 67-4-2009(6) provides that a hospital company filing a franchise and excise tax return on a combined basis shall be allowed as a further credit an amount equal to four percent of the cost of medical supplies and medical equipment used by or placed in service by the members of the controlled group in Tennessee during the tax year. The aggregate amount of credits available under subsections (5) and (6) cannot exceed \$9 million.

³ The Tennessee franchise and excise tax statutes were recodified in 1999. The term “prior law” means the franchise and excise tax statutes under former Tenn. Code Ann. §§ 67-4-801 *et seq.* and former Tenn. Code Ann. §§ 67-4-901 *et seq.*, which were in effect until December 31, 1998.

⁴ The definition of “hospital company” under Tenn. Code Ann. § 67-4-804 was in effect from 1995 through 1998.

The term “hospital” was defined under prior law at Tenn. Code Ann. § 67-4-804(10) (1998) as having the definition provided at Tenn. Code Ann. § 68-11-201. Tenn. Code Ann. § 68-11-201(21) (1998) defined the term “hospital” as “any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with the services of a physician or dentist, of one (1) or more nonrelated persons who may be suffering from deformity, injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment.”⁵

Thus, to come within the definition of “hospital company” under Tenn. Code Ann. § 67-4-2004(17), the Taxpayer must satisfy a number of requirements. First, the Taxpayer must have qualified as a hospital company under Tenn. Code Ann. § 67-4-804(11)(A) (1998). To do so, the Taxpayer (1) must have been in existence before January 1, 1999; and (2) must have been subject to Tennessee franchise and excise taxation before January 1, 1999. Second, the Taxpayer must show that substantially all of its activities during the taxable year were the performance of health care services, as that term is defined under Tenn. Code Ann. § 67-4-804(11)(C) (1998). Third, the Taxpayer must either (1) own and manage ten or more hospitals, or (2) perform health care services for ten or more hospitals owned and managed by a corporation or other entity that is in the Taxpayer’s same controlled group, as defined by 26 U.S.C. § 267(f)(1).

It is unclear whether the Taxpayer satisfies the initial requirements set forth under Tenn. Code Ann. § 67-4-2004(17) and described above. From the facts presented by the Taxpayer, it cannot be ascertained whether the Taxpayer was in existence before January 1, 1999, or whether it was subject to Tennessee franchise and excise taxation before that date. Additionally, assuming that the Taxpayer was in existence at that time, it is unclear whether substantially all of the Taxpayer’s activities were the performance of health care services.

The Taxpayer has indicated that it owns at least [NUMBER] subsidiaries, each of which provides health-related services. However, the Taxpayer has indicated that the subsidiaries come within the definition of “home care organizations” as defined under Tenn. Code Ann. § 68-11-201(18) and are licensed to do business as such. Significantly, these entities are not licensed as hospitals, as the term is defined for franchise and excise tax purposes. Thus, the Taxpayer does not satisfy the requirement set forth under Tenn. Code Ann. § 67-4-804(11)(A)(i)-(ii) (1998) that it (1) own and manage ten or more *hospitals*, or (2) perform health care services for ten or more *hospitals* owned and managed by a corporation or other entity that is in the Taxpayer’s same controlled group. While the Taxpayer has indicated that it is affiliated with a licensed hospital, the ownership and management of, or the performance of services for, this one hospital alone would not satisfy the requirement that services be provided to *ten or more* hospitals.

Accordingly, the Taxpayer does not come within the definition of a “hospital company” for Tennessee franchise and excise tax purposes.

⁵ This definition of the term “hospital” is still in effect. *See* Tenn. Code Ann. § 68-11-201(27) (2006).

Kristin E. Husat
Tax Counsel

APPROVED: Reagan Farr
Commissioner of Revenue

DATE: 03/29/07